



Larry Joe Lyons, Jr. appeals the revocation of two terms of probation and his sentence for Operating a Vehicle While Intoxicated, a Class D felony. We affirm.

While on probation for two drinking and driving (“OWI”) convictions, Lyons was charged for another. Lyons pled guilty and admitted violating his probation. The trial court revoked his probation, ordered him to execute the balance of his sentences, and sentenced him to a two-year term on the new conviction.

### I. Due Process

Lyons advances two arguments in support of his due process claims. First, he suggests that a trial court should scrutinize probation revocation proceedings by the same standards as those utilized at sentencing. Second, he argues that he was entitled to a detailed statement of the reasons for the revocation of his probation. While we agree that probationers have certain procedural rights, including a written statement by the factfinder as to the reasons for revoking probation, they are not entitled to the full array of constitutional rights afforded a defendant at trial. Morrissey v. Brewer, 408 U.S. 471, 489 (1972).

Specifically, Lyons argues that, within the context of revocation, a trial court should engage in the same process that it does for sentencing: identifying and finding mitigating and aggravating circumstances, and weighing them. However, the cases he cites do not support this proposition. To the contrary, the Morrissey Court explained that “[w]e have no thought to create an inflexible structure for parole revocation procedures. The few basic requirements . . . should not impose a great burden on any State’s parole system.” Id. at 490. We decline Lyons’ invitation to do more.

Next, Lyons asserts that the trial court did not issue the required written statement setting forth the reasons for his probation revocation. However, in Cox v. State, this Court affirmed a probation revocation where the trial court's statement was evidenced by a transcript of the revocation hearing. Cox v. State, 850 N.E.2d 485, 488-89 (Ind. Ct. App. 2006); see also Sanders v. State, 825 N.E.2d 952, 955-56 (Ind. Ct. App. 2005), trans. denied.

In the instant case, the trial court heard evidence, argument, and Lyons' statement regarding all three convictions. On the record, the trial court noted Lyons' "continuing to drink alcohol and [] continuing to drive after being adjudged a habitual traffic violator." Transcript at 79. It then revoked Lyons' probation. Meanwhile, in its subsequent discussion of sentencing on the new conviction, the trial court made clear that it had found the probation violation to be an aggravating circumstance. In its written order, the trial court referenced the fact that it had found aggravating circumstances. Indeed, it is disingenuous to suggest that a defendant pleading to his fifth OWI conviction would not have notice of the trial court's reason for revoking his probation. As with our decisions in Cox and Sanders, we conclude that the trial court's process satisfied Lyons' due process rights.

## II. Probation Revocation

On appeal, Lyons argues that the trial court abused its discretion in ordering the execution of his previously-suspended sentences. We review for an abuse of discretion a decision to revoke probation. Sanders, 825 N.E.2d at 957. Violation of a single condition of probation is sufficient to revoke probation. Pitman v. State, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001), trans. denied.

Lyons was convicted of OWI charges in 1993 and 1996, violating probation for both. Lyons was arrested but not convicted of OWI charges in 1998 and 2000. He was then convicted of the three instant OWI offenses in 2003 and 2007. As noted by the trial court, it is not lawful for Lyons to operate a vehicle at all, given the suspension of his driver's license, regardless of whether he has been drinking. The trial court did not abuse its discretion in revoking his probation and ordering the execution of his previously-suspended sentences.

### III. Sentencing

Sentencing decisions are within the trial court's discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007). So long as a sentence is within the statutory range, the trial court's sentencing determination will be reversed only for an abuse of discretion. Id. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. Id. This Court examines both the written and oral sentencing statements to discern the findings of the trial court. McElroy v. State, 865 N.E.2d 584, 589 (Ind. 2007).

A trial court is not obligated to weigh or credit the mitigating factors as suggested by the defendant. Jones v. State, 790 N.E.2d 536, 540 (Ind. Ct. App. 2003). An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Gray v. State, 790 N.E.2d 174, 177 (Ind. Ct. App. 2003). Only when the trial court fails to find a significant mitigator that is clearly supported by the record is there a reasonable belief that it

was improperly overlooked. Jimmerson v. State, 751 N.E.2d 719, 722 (Ind. Ct. App. 2001).

#### A. Likelihood to Respond Affirmatively to Probation

As noted above, Lyons has a history of criminal conduct. He has violated probation each time it has been granted. In light of Lyons' having failed repeatedly to respond favorably to probation, he has not established that the trial court improperly overlooked this offered mitigating circumstance.

#### B. Hardship to Defendant

Lyons testified that he was "deathly scared" and concerned for his safety in prison. His attorney, however, did not mention this issue in his argument. Then after the trial court had ruled, Lyons claimed that he had suffered a concussion in prison. Arguably, he waived the issue by not including argument before the trial court. Regardless of waiver, Lyons offered no medical records or testimony from health care providers to support his assertion. Meanwhile, it is clear that the trial court did not ignore his claim, as it directed the Sheriff's Office to observe Lyons and place him in the medical wing, if necessary. Based upon this record, the trial court was not obligated to find hardship as a significant mitigating circumstance.

#### C. Guilty Plea

A guilty plea is not automatically a significant mitigating factor. Gray v. State, 790 N.E.2d 174, 178 (Ind. Ct. App. 2003). Moreover, a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic

one. Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), trans. denied. Lyons received a significant benefit as the State dismissed a Class C felony charge. Furthermore, he was pleading guilty to at least his fifth OWI conviction. Lyons' decision to plead guilty was merely pragmatic. The trial court did not abuse its discretion in sentencing him.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.